American Council on Education®
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August 3, 2020

The Honorable Richard Neal Chairman Committee on Ways and Means U.S. House of Representatives Washington, DC 20515	The Honorable Kevin Brady Ranking Member Committee on Ways and Means U.S. House of Representatives Washington, DC 20515
The Honorable Charles Grassley Chairman Committee on Finance U.S. Senate Washington, DC 20510	The Honorable Ron Wyden Ranking Member Committee on Finance U.S. Senate Washington, DC 20510

RE: Eligibility for Refundable Tax Credit for Paid Sick and FMLA Leave Mandates, Employee Retention Credit and Healthy Workplace Tax Credit

Dear Chairman Neal, Ranking Member Brady, Chairman Grassley, and Ranking Member Wyden:

On behalf of the American Council on Education and the undersigned higher education associations, I am writing today to urge you to make public and private nonprofit colleges and universities eligible for the paid sick and family leave refundable tax credit created in the "Families First Coronavirus Response Act" (FFCRA), and to make public institutions eligible for the refundable employee retention tax credit created by the CARES Act. In addition, we urge you to make public institutions eligible for the safe and healthy workplace tax credit included in the "American Workers, Families, and Employers Assistance Act."

All public and private nonprofit colleges and universities, two- and four-year, are facing unprecedented challenges as a result of the COVID-19 pandemic. In mid-March, they rapidly closed their campuses and implemented wholesale shifts to online instruction, causing massive disruption to students while incurring enormous unforeseen expenses and revenue losses. Now as they plan and prepare for a new academic year, public and private institutions are spending millions to purchase personal protection equipment and cleaning supplies, to modify facilities to de-densify their campuses, and to establish testing plans and vendor relationships to implement those plans. We conservatively estimate that colleges and universities will spend approximately $74 billion on these costs as they prepare for the fall semester. Well-targeted and effective tax policies that benefit public and private nonprofit institutions can be enormously important in helping facilitate the return of some form of their academic and related campus experiences this fall, preserving employment for millions, and helping restart America's economy.

As you know, the FFCRA mandated that many employers provide up to two weeks of paid sick leave and 10 weeks of partially paid Family and Medical Leave Act (FMLA) leave to their employees. Both of these provisions will provide great relief for employees navigating these challenging times. In recognition of the cost of these new mandates, Congress sought to cushion the financial impact on employers subject to the mandate by providing a refundable tax credit. Unfortunately, while public colleges and universities are required to provide this paid leave, because they are entities of their states they were excluded from accessing the tax credit. In addition, the recently passed HEROES Act expanded the mandate to large private employers with 500 or more employees, which includes many private nonprofit colleges and universities, while excluding them from eligibility from the tax credit. This creates a massive unfunded mandate for both public and private nonprofit institutions, which are already reeling financially from the COVID-19 pandemic and in no position to shoulder these costs.

Public and private institutions each employ thousands of individuals across their campuses, so this requirement will be an enormous expense totaling millions of dollars. For example, public four-year universities in Illinois, with more than 48,000 employees, estimated that the cost to comply with the leave mandate would amount to approximately $195 million. The estimated cost exceeds $35 million at the University of Florida alone. The University of Wisconsin-Madison, with about 24,000 employees, is facing costs in the range of $34-$65 million. A smaller, private nonprofit institution, Elon University in North Carolina with only 1,500 employees, would still face costs of over $3 million. Considering that there are several thousand public institutions and private nonprofit colleges and universities with at least 500 employees in the United States, it is easy to see the enormous financial impact of this mandate.

The House-approved HEROES Act included a legislative fix to make all public institutions eligible for the tax credit but unfortunately excluded larger private nonprofit colleges and universities from the tax credit while expanding the paid leave mandate to them. We strongly urge the Congress to simply expand access to the paid sick and FMLA refundable tax credit to <u>all</u> public and private nonprofit institutions in the Phase IV COVID-19 legislation.

The CARES Act created a refundable payroll tax credit of up to 50% of $10,000 in the wages paid to each employee by employers during the COVID-19 crisis. Employers whose operations were "fully or partially" suspended due to government orders related to COVID-19 are eligible for the credit. While private nonprofit institutions are eligible for this credit, public institutions are excluded from accessing it. Both the HEROES Act and the "American Workers, Families, and Employers Assistance Act" include laudable and needed expansions to the employee refundable payroll tax credit, but only the HEROES Act would make public institutions eligible for this effective tax credit. Congress should enact as part of the Phase IV Covid-19 bill an expanded employee retention tax credit to which all public and private nonprofit colleges and universities would be eligible.

Finally, the "American Workers, Families, and Employers Assistance Act" would create a healthy workplace refundable payroll tax credit to help employers bear the enormous costs of "qualified employee protections expenses," such as COVID-19 testing, PPE, cleaning supplies, as well as COVID-19-related qualified workplace reconfiguration and technology expenses. While this undoubtedly would be smart tax policy in helping manage the enormous costs of making workplaces safe so as to restart the economy, unfortunately the tax credit carries the same design flaw as the other tax provisions discussed above by expressly and inexplicably excluding public colleges and universities from utilizing it. If you decide to include such a tax credit in the Phase IV COVID-19 legislation, both public and private nonprofit institutions must be made eligible.

Thank you for your attention to this important matter.

Sincerely,

Ted Mitchell
President

On behalf of:

American Association of Community Colleges
American Association of State Colleges and Universities
American Council on Education
Association of American Universities
Association of Catholic Colleges and Universities
Association of Jesuit Colleges and Universities
Association of Public and Land-grant Universities
College and University Professional Association for Human Resources
Council for Advancement and Support of Education
Council for Christian Colleges & Universities
Council for Higher Education Accreditation
EDUCAUSE
Midwestern Higher Education Compact
NASPA - Student Affairs Administrators in Higher Education
National Association of College and University Business Officers
National Association of Independent Colleges and Universities
National Association of System Heads
New England Board of Higher Education
Southern Regional Education Board
State Higher Education Executive Officers Association